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LEGISLATIVE ASSEMBLY,

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trator may, and it shall be his duty to commence and prosecute to final judgment, any proper action or suit, at law, or in chancery, for the recovery of the same, and may recover for the benefit of the creditors, all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover for all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

SEC. 17. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors of the deceased, nor unless the creditors making the application shall pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court shall judge just and equitable.

Executors, &c., not bound to prosecute except on application of creditors &c.

SEC. 18. All real estate so recovered, as provided in the sixteenth section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor, from the probate court, and the proceeds of all goods, chattels, rights, and credits, recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

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Commissioners to examine and adjust claims, when to be appointed.

SEC. 1. When letters testamentary, or of administration, shall be granted by any probate court, it shall be the duty of such court to appoint two or more suitable persons to be commissioners, to receive, examine, and adjust all claims and demands of all persons against the deceased, except in the following cases :

1. When it shall appear that there are no debts existing against such deceased person :

2. When the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, shall not exceed one hundred and fifty dollars, and shall be assigned for the support of the widow and children, as provided by law ; in which case, such assignment shall be deemed a full and final administration, and bar to all claims against the estate.

Commissioners to appoint time and place of meeting, and to give notice.

SEC. 2. When such commissioners shall be appointed, it shall be their duty to appoint convenient times and places, when and where they will meet, for the purpose of examining and allowing the claims ; and, within sixty days after their appointment, they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in this territory, or in any other manner which the court may direct.

Judge of probate to designate paper in which notice to be published, &c.

SEC. 3. The judge of probate in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the several towns in which it shall be required to be posted, or other mode of notifying, which he may deem necessary and proper.

When commissioner shall die, &c., court to appoint another in his place.

SEC. 4. If any commissioner appointed by the probate court shall at any time die, remove out of the territory, refuse, or become in any other way incapacitated to perform the duties of his appointment, the court may appoint another commissioner in his place ; and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

SEC. 5. The probate court shall allow such time as the circumstan-

ces of the case shall require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months; and the time allowed shall be stated in the commission.

Time allowed for presenting claims.

SEC. 6. The probate court may extend the time allowed to creditors to present their claims, as the circumstances of the case may require; but not so that the whole time shall exceed two years from the time of appointing such commissioners.

Time may be extended, not exceeding two years.

SEC. 7. On the application of a creditor, who has failed to present his claim, if made within six months from the time previously limited, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall personally notify the parties, of the time and place of hearing, and as soon as may be, make return of their doings, to the probate court.

When commission may be renewed, and further time allowed, &c.

SEC. 8. In the case mentioned in the preceding section, if the judge of probate shall think proper, instead of renewing the commission, he may appoint a time and place for examination and adjustment of such claim, before himself, and cause personal notice thereof to be given to the parties; and in that case, he shall proceed to examine and adjust such claim, in like manner as the same might have been done by such commissioners.

When court may examine and adjust claim.

SEC. 9. When a creditor, against whom the deceased had claims, shall present a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased, in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they shall find the same to be; but no claim barred by the statute of limitations, shall be allowed by the commissioners, in favor of or against the estate, as a set-off or otherwise.

Set-offs; claims barred, not to be allowed.

SEC. 10. The commissioners shall be sworn to the faithful discharge of their duties, and any one of them shall be authorized to administer oaths to parties and witnesses, when the same shall be required or proper for the investigation and trial of questions before them.

Commissioners to be sworn, and may administer oaths.

SEC. 11. At the expiration of the time limited, or as soon thereafter as they shall have time to complete the hearing of the claims presented, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented or exhibited in offset, and stating how much was allowed, and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate; and the report shall state particularly the manner of giving notice to the claimants.

Report of commissioners.

SEC. 12. The commissioners shall have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which may be payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

What claims commissioners may try and decide, &c.

SEC. 13. Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which shall be payable at a future day, according to the terms, and at the time specified in the contract.

Debts payable at a future day.

SEC. 14. Every person having a claim against a deceased person, proper to be allowed by the commissioners, who shall not, after the publication of notice, as required in the second section of this chapter, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand, or from setting off the same in any action whatever.

Persons failing to present claims, to be barred.

No suit to be commenced against executor or administrator, except ejectment, &c., until, &c.

SEC. 15. When commissioners shall be appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except actions to recover the possession of real estate, and actions to recover the possession of personal property; nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

When actions pending to be prosecuted to judgment and judgment to be certified, &c.

SEC. 16. All actions and suits, which may be pending against a deceased person, at the time of his death, may, if the cause of action survives, be prosecuted to final judgment; and the executor or administrator may be admitted to defend the same; and if judgment shall be rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

Executor or administrator not prevented from bringing suits.

SEC. 17. Nothing in this chapter shall be construed to prevent an executor or administrator, when he shall think it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his life time, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

Set-offs in suits by executors, &c.

SEC. 18. In such case, the defendant may set-off any claim he may have against the deceased, instead of presenting it to the commissioners, and all mutual claims may be set-off in such action; and if final judgment shall be rendered in favor of the defendant, the same shall be certified, by the court rendering it, to the probate court, and the judgment shall be considered the true balance.

Estate of deceased liable on joint contract, &c.

SEC. 19. When two or more persons shall be indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them shall die, his estate shall be liable therefor, and it may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone; and the other parties to such joint contract may be compelled to contribute, or pay the same, if they would have been liable to do so upon payment thereof by the deceased.

OF APPEALS FROM THE DECISIONS OF COMMISSIONERS.

Appeal how made.

SEC. 20. Any executor, administrator, or creditor, may appeal from the decision and report of the commissioners, to the district court for the same county, if application for such appeal be made in writing, filed in the probate office within sixty days after the returning of the report of the commissioners.

Bond to be given by claimant on appeal.

SEC. 21. In case of an appeal, by a claimant against the estate, he shall, within the time aforesaid, and before such appeal shall be allowed, give a bond to the adverse party, with sufficient surety, to be approved by the judge of probate, and filed in his office, with a condition that he shall prosecute his appeal to effect, and pay all damages and costs, which may be awarded against him on such appeal.

Cases in which appeal may be allowed.

SEC. 22. No appeal shall be allowed from the decision and report of the commissioners, except in the following cases:

1. When such commissioner shall disallow any claim in favor of any creditor, or of the estate, in whole or in part, to the amount of twenty dollars:

2. When the commissioners shall allow any claim, in whole, or in part, and the sum allowed, being objected to, shall amount to twenty dollars; in either of which cases, the aggrieved party may appeal.

SEC. 23. In all cases of appeal from the decision of the commis-

sioners, the person appealing shall give notice of such appeal, and of the hearing thereof in the district court, in such manner as the judge of probate shall direct, at least twelve days before the next term thereof, after the appeal is allowed, if there shall be so many days; and if not, as soon as may be.

Notice of appeal and of hearing.

SEC. 24. The party appealing shall procure, and file in the district court, to which the appeal is taken, at or before the next term of such court, after the appeal is allowed, a certified copy of the record of the allowance or disallowance appealed from, of the application for the appeal, and the allowance of the same, together with the proper evidence that notice has been given to the adverse party, according to the order of the probate court.

Party appealing to procure and file copy of record.

SEC. 25. When such certified copy shall have been filed in the district court, such court shall proceed to the trial and determination of the same, according to the rules of law, allowing a trial by jury, of all questions of fact, in cases where such trial may be proper; and such court may direct an issue to be made up between the parties, in a brief form, when it shall be deemed necessary; and questions of law may be carried to the supreme court, and costs may be allowed or denied, in the discretion of the court.

Trial of appeal.

SEC. 26. The final decision and judgment, in cases so appealed, shall be certified by the district court, or supreme court; as the case may be, to the probate court; and the same proceedings shall be had thereon, as if such decision had been reported by the commissioners.

Judgment to be certified to probate court, &c.

SEC. 27. If any claimant, appealing on account of the disallowance of his claim by the commissioners, shall fail to prosecute his appeal in the district court to which the appeal is taken, such claim shall be forever barred, and said court may allow costs to the appellee.

If appeal not prosecuted, claim barred.

SEC. 28. If the person objecting to a claim, and appealing on account of the allowance of such claim, shall neglect to prosecute his appeal, the court to which the appeal shall be taken, on motion of the adverse party, and on his producing an attested copy of the record of the probate court, showing such appeal, shall affirm the allowance appealed from, and may allow costs against the appellant.

When circuit shall affirm allowance appealed from.

SEC. 29. When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate, as creditor, devisee, legatee, or heir, may appeal from such decision, in the same manner as the executor or administrator might have done; and the same proceedings shall be had, in the name of the executor or administrator: *Provided*, That the person appealing in such case, shall, before the appeal shall be allowed, give a bond, to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

When any person interested in estate may appeal, &c.

SEC. 30. When an executor or administrator shall have a claim against the estate which he represents, which shall be disallowed by the commissioners, and he shall take an appeal therefrom to the district court, notice of such appeal shall be given to all concerned, by personal service thereof, or by publication, under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which, shall be four weeks before the hearing of the appeal.

Notice in case of appeal by executor, &c., on disallowance of his claim.

LIMITATION OF TIME FOR PAYING DEBTS.

SEC. 31. The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order, allowing to the executor or administrator a time for disposing of the estate, and

Order allowing time for paying debts, &c.

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paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year and six months.

Court may extend time.

SEC. 32. The probate court may, on the application of the executor or administrator, from time to time, as the circumstances of the estate may require, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years.

Application for extension and notice of hearing.

SEC. 33. When an executor or administrator shall make application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary, or of administration, the probate court shall appoint a time for hearing and deciding on such application, and shall cause notice of such application, and of the time and place of hearing to be given to all persons interested, by publication three weeks successively, in some newspaper to be designated by the court; and no such order, extending the time, shall be granted, unless such notice shall have been previously given.

When new administrator appointed, court may extend time, &c.

SEC. 34. When an executor or administrator shall die, or become incapable of discharging his trust, and a new administrator of the same estate shall be appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding six months beyond the time which the court might by law allow to such original executor or administrator, upon due notice given as required in the preceding section.

OF THE DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.

When executor, &c., to pay debts.

SEC. 35. If, after the report of the commissioners, and ascertaining the claims against any estate, it shall appear that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

Order of payment when insufficiency of assets.

SEC. 36. If the assets which the executor or administrator may have received, and which can be appropriated to the payment of debts, shall not be sufficient, he shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

1. The necessary funeral expenses :
2. The expenses of the last sickness :
3. Debts having a preference by the laws of the United States :
4. Debts due to other creditors.

When creditors to be paid dividend.

SEC. 37. If there shall not be assets enough to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class shall be fully paid.

When court to order payment of debts and distribution of assets.

SEC. 38. After the return of the report of commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts and the distribution of the assets which may have been received by the executor or administrator, at the time for that purpose, among the creditors, as the circumstances of the estate shall require, according to the provisions of this chapter.

Court may suspend decree in case of appeal undetermined.

SEC. 39. If an appeal shall have been taken from the decision of the commissioners, as provided in this chapter, and shall remain undetermined, the probate court may suspend the decree for the payment of debts, mentioned in the preceding section, or may order a distribution among the creditors whose claims shall have been allowed, leaving in the hands of the executor or administrator, sufficient assets to pay the claim which may have been disputed and appealed.

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SEC. 40. When the disputed claim shall have been finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent and in the same proportion, as the claims of the other creditors.

When disputed claim ordered to be paid.

SEC. 41. If the whole of the debts shall not have been paid by the first distribution, and if the whole assets shall not have been distributed, or if other assets shall afterwards come to the hands of the executor or administrator, the probate court may, from time to time, according to the circumstances of the case, make further decree for the distribution of assets.

Further decree for distribution.

SEC. 42. Whenever a decree shall have been made by the probate court, for the distribution of the assets among the creditors, the executor or administrator, after the time of payment shall arrive, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt; or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend shall not be paid as above mentioned.

When executor, &c., personally liable to creditor.

SEC. 43. When the time for paying the debts of a deceased person shall be finally limited, by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate shall be insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts, which notice shall be given by publishing the same at least three weeks successively, in some paper to be designated by the court, or in such other manner as the court may direct.

Notice of time limited for payment of debts may be given.

SEC. 44. If, after notice shall have been given, as provided in the preceding section, any creditor shall neglect to demand from the executor or administrator, his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts; or, if the notice shall have been given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

Creditor neglecting to demand debt in two years to be barred.

CONTINGENT CLAIMS.

SEC. 45. If any person shall be liable as security for the deceased, or have any other contingent claim against his estate, which cannot be proved as a debt before the commissioners, or allowed by them, the same may be presented with the proper proof to the probate court, or to the commissioners, who shall state the same in their report, if such claim was presented to them.

Contingent claims may be presented.

SEC. 46. If the court shall be satisfied from the report of the commissioners, or by the proof exhibited, said court may order the executor or administrator to retain in his hands, sufficient to pay such contingent claim when the same shall become absolute; or if the estate shall be insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

When court may order estate retained for payment of claims.

SEC. 47. If such contingent claim shall become absolute, and shall be presented to the probate court, or to the executor or administrator, at any time within two years from the time limited for other creditors, to present their claims to the commissioners, it may be allowed by the probate court, upon due proof, or it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report; and the persons interested, shall have the same right of appeal, as in other cases.

Contingent claim absolute, may be presented, &c.

SEC. 48. If such contingent claim shall be allowed, as mentioned in the preceding section, or established on appeal, the creditor shall be en-

When claimant entitled to payment.

titled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator, shall be sufficient for that purpose; but if the claim shall not be finally established, as provided in the preceding section, or, if the assets retained in the hands of the executor or administrator, shall not be wholly exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by order of the probate court, to the persons entitled to the same, according to law.

When claim may be presented to probate court.

SEC. 49. If the claim of any person shall accrue or become absolute at any time after the time limited for creditors to present their claims, the person having such claim, may present it to the probate court, and prove the same at any time within one year after it shall accrue or become absolute; and, if established in the manner provided in this chapter, the executor or administrator shall be required to pay it, if he shall have sufficient assets for that purpose, and shall be required to pay such part as he shall have assets to pay; and if real or personal estate shall afterwards come to his possession, he shall be required to pay such claim, or such part as he may have assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

When creditor may recover claim of heirs.

SEC. 50. When a claim shall be presented within one year from the time when it shall accrue, and be established, as mentioned in the preceding section, and the executor or administrator shall not have sufficient to pay the whole of such claim, the creditor shall have a right to recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees, or legatees who shall have received sufficient real or personal property from the estate.

Defense by executor.

SEC. 51. If an action shall be commenced against an executor or administrator on such claim, as mentioned in the preceding forty-ninth section, and for the payment of which sufficient assets shall not have been retained, as before provided in this chapter, the executor or administrator may give notice under his plea to such action, that he has fully administered the estate which has come to his possession or knowledge.

When defendant discharged.

SEC. 52. If it shall appear on the trial of such action that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, he shall be discharged, and shall have judgment for his costs; but if it shall be found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as shall be equal to the amount of assets in his hands.

To what extent heirs liable.

SEC. 53. When the heirs, devisees, or legatees shall have received real or personal estate, and shall be liable for any debts as mentioned in this chapter, they shall be liable in proportion to the estate they may have respectively received; and the creditors may have any proper action or suit in law or equity, and shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they may have respectively received; but no such action shall be maintained unless commenced within one year from the time the claim shall be allowed or established.

Contribution, &c.

SEC. 54. If, by the will of the deceased, any part of his estate, or any devisees or legatees shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves only according to the will.

When all persons liable, not included in suit, others may be brought in.

SEC. 55. If all the persons liable for the payment of any such debt, shall not be included in the action or suit as defendants, the suit or action shall not thereby be in any way dismissed or barred, but the court before which it shall be pending, may order any other parties brought

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in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

SEC. 56. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable, shall dispute the debt, or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

Proceeding in chancery against persons liable.

SEC. 57. If any of the heirs, devisees, or legatees shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

When estate of deceased heir, &c., liable.

SEC. 58. When any of the heirs, devisees or legatees shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding chapter.

Contribution.

SEC. 59. If the appointment of commissioners to allow claims, shall in any case be omitted, no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees, or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may on obtaining judgment, have execution against such real or personal estate.

If appointment of commissioners omitted, claimants not prevented from suing, &c.

SEC. 60. In no other case except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment, or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payments, except in the case provided for in the preceding section.

No action to be prosecuted against executors, &c., except as provided in this chapter.

CHAPTER 58.

OF RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

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